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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

NATALIA CHARLOTTE
KUTYBA,

Plaintiff and Respondent,

v.

MOHAMMED AMOUCAL,

Defendant and Appellant.

B289544

(Los Angeles County
Super. Ct. No. 17CHFL00413)

APPEAL from an order of the Superior Court of
Los Angeles County, Michelle Short, Commissioner. Affirmed.

Law Office of Patrick Santos and Patrick Thomas Santos
for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

The superior court issued a domestic violence restraining order (DVRO) (Fam. Code, § 6300)¹ protecting Natalia Charlotte Kutyba from her estranged husband, Mohammed Amouchal. Amouchal appealed. For the reasons given below, we affirm the order.

FACTUAL BACKGROUND

On May 2, 2017, Kutyba and Amouchal, who had then been married five years, engaged in a verbal and physical altercation in their apartment. During the incident, Kutyba spoke by telephone with her friend, E.D. She told E.D. that she wanted to divorce Amouchal. According to Kutyba and E.D., Amouchal grabbed the phone from Kutyba and threatened to kill E.D. and Kutyba's brother. Amouchal then broke furniture in the home, screamed at Kutyba, pushed her to the floor, and threw her phone at her. According to Amouchal, he did not strike Kutyba or "touch her in any way"; Kutyba simply fell when she "snatched the phone" from him and he "let it go."² Kutyba went outside the apartment and called the police. Amouchal also called the police. The responding police officers spoke to the parties and observed that Amouchal had received scratches on his hand, arms, and face, and that Kutyba had a scratch on her

¹ Unless otherwise specified, statutory references are to the Family Code.

² In his opening brief, Amouchal refers to evidence introduced in another case in which he obtained a DVRO against Kutyba. To the extent such evidence was not before the court in the instant case, we do not consider it. (See *In re Zeth S.* (2003) 31 Cal.4th 396, 405; *Comerica Bank v. Runyon* (2017) 16 Cal.App.5th 473, 483.)

hand. Based on the parties' statements and their respective injuries, the officers concluded that Kutyba was the "domina[nt] aggressor" and arrested her on suspicion of willfully inflicting corporal injury upon a spouse. (Pen. Code, § 273.5, subd. (a).)³

Amouchal arranged for Kutyba's release on bail and drove her to their apartment. On the way, he told Kutyba that if she was "not a good wife," he would "send [her] back to jail." After Amouchal fell asleep, Kutyba left to stay at her brother's apartment. She drove the couple's Porsche Boxster, which she considered her car and which was registered in Amouchal's name alone.

On May 6, 2017, Kutyba and Amouchal met at the office of a bail bondsman. There, Amouchal yelled at Kutyba and insulted her. Kutyba left in the Boxster and Amouchal followed her in another car. Kutyba drove to a gas station, where she waited in a restroom for 25 minutes. When she emerged, Amouchal was waiting for her outside the gas station. Kutyba then drove to her brother's apartment and parked the Boxster in his garage. Amouchal followed her and parked outside the apartment for four hours while he called and texted Kutyba repeatedly, making threats against her and her family.

The next day, Amouchal changed the locks to their apartment.

On May 8, 2017, Kutyba arranged for police to be present while she collected her belongings from the apartment. The same day, Amouchal arranged for police to be present when he

³ Our record does not reveal whether Kutyba was charged with any crime. According to Kutyba, the criminal case arising from the May 2, 2017 altercation was dismissed on May 23.

retrieved the Boxster from Kutumba's brother's garage. He sold the car one or two days later without informing Kutumba.

On May 23, 2017, Amouchal filed a request in the superior court for a DVRO against Kutumba based on the May 2, 2017 altercation.⁴ The court granted the request in July 2017. The DVRO required Kutumba to stay at least 100 yards away from Amouchal and prohibited her from contacting him for three years.⁵ The two had no further interaction until they appeared in court in the instant case in December 2017.

In November 2017, Kutumba filed a request for a DVRO against Amouchal. In support of the request, Kutumba submitted a written statement describing not only the events of May 2017, summarized above, but also numerous events that took place

⁴ Amouchal's appellant's appendix includes numerous documents related to his DVRO proceedings against Kutumba and her brother. Such documents are not properly included in the appellant's appendix in this case, and we do not, therefore, consider them. (See Cal. Rules of Court, rule 8.124(b) & (g).) We may, however, take judicial notice of court records and, on our own motion, do so with respect to Amouchal's May 23, 2017 request for a DVRO against Kutumba in Los Angeles Superior Court case No. BQ058219 (but we do not judicially notice facts stated in the request or supporting declarations), the superior court's July 5, 2017 DVRO in that case, and this court's September 6, 2017 order dismissing Kutumba's appeal in our case No. B284028. (Evid. Code, §§ 452, subd. (d), 459, subd. (a); 2 Jefferson, Cal. Evidence Benchbook (Cont.Ed.Bar 4th ed. 2019) Judicial Notice, § 49.10, pp. 49-7–49-8.)

⁵ Although Kutumba appealed from this order, this court dismissed the appeal in September 2017 because she failed to file a rule-compliant case information statement.

from 2012 through February 2017 in which Amouchal was sexually assaultive, physically violent, and verbally abusive to her.⁶ The abuse included “forcing [her] to engage in sexual activity with him without [her] consent,” “slapping [her] across the face,” “grabb[ing her] and [throwing her] across the room,” pushing her and knocking her to the floor, kicking her, choking her, hitting her, pulling her hair, and spitting on her in public. He also threatened to beat her and hit her abdomen to terminate her pregnancy unless Kutyba had an abortion, which she did. Most of the incidents Kutyba described occurred during fits of anger or “rage” in which Amouchal threw things in their apartment and broke furniture, dishes, or parts of Kutyba’s car. The violence was typically accompanied by insults and derogatory epithets, such as “worthless bitch” and “stupid dirty bitch,” or threats to kill Kutyba, her family, or himself.

Kutyba further stated that, after “endur[ing] years of pain due to multiple abuse and manipulation,” she decided that “enough is enough.” In February 2017, Kutyba talked to Amouchal about getting a divorce. Amouchal “became aggressive” and threw his phone at her. Amouchal told Kutyba to never speak of divorce again, “threatened” her, and said he would “never leave [her] in peace.”

On November 16, 2017, the court issued a temporary restraining order (TRO) requiring Amouchal to stay 100 yards

⁶ At the hearing on Kutyba’s DVRO request, Kutyba affirmed that everything in her request was true and correct, and the court admitted her declaration “subject to cross-examination.” Amouchal’s counsel did not cross-examine Kutyba regarding the statements.

away from Kutymba, her home, and her car, and set a hearing for December 7, 2017.⁷ The order also provided for Kutymba's right to possess the Boxster.

Amouchal did not file a response to the petition.

On December 7, Kutymba drove her brother's red Smart Car to the Chatsworth courthouse for the hearing and parked it on a nearby street. Amouchal parked his Jeep Wrangler in the courthouse parking lot.

The parties appeared in court, and the court continued the hearing to January 4, 2018.

After the court appearance, Amouchal drove out of the parking lot and parked directly in front of the Smart Car. As Kutymba began to walk toward the car, Amouchal got out of the Jeep and opened the trunk. Kutymba became frightened and returned to the courthouse, where she obtained a police officer to escort her to her car. When she and the officer went outside, Amouchal was gone. Kutymba then went to a police station to report the incident.

According to Amouchal, he left the courthouse parking lot and parked his Jeep on the street to use his phone, take his jacket off, take the top off the vehicle, and put the top in the trunk. He then left. He said he did not know what car Kutymba was driving.

In response, Kutymba testified that Amouchal has seen her brother with his Smart Car many times, including an instance when Amouchal saw Kutymba and her brother arrive at court in

⁷ As permitted by section 6300, the court issued the TRO without notice to Amouchal. Amouchal was subsequently served with the TRO and notice of the December 7, 2017 hearing.

the Smart Car, and Amouchal was aware that she had to borrow the car because Amouchal had taken the Boxster.

After another continuance, the hearing took place on February 16, 2018. Kutyba affirmed that the statements she made in support of the TRO were true and correct. Regarding the May 2, 2017 incident, she added that Amouchal pushed her multiple times during the “struggle over the phone,” causing her to fall to the floor. She further testified as to the incident involving the parked cars outside the Chatsworth courthouse, and the May 8, 2017 incident where Amouchal waited outside her brother’s apartment for four hours.

E.D. testified that during the May 2, 2017, altercation, Amouchal spoke to him on Kutyba’s phone and told him, “ ‘I kill you soon. I rip your face. Ah, I kill you soon.’ . . . ‘You will see.’ ” E.D. also corroborated Kutyba’s testimony regarding the courthouse parking incident and said that Amouchal’s actions made Kutyba “very scared.”

Amouchal testified that he did not strike or touch Kutyba during the May 2, 2017 altercation, and that she had scratched his arms, hands, and face. He introduced a police report (without objection) indicating that the police officers considered Kutyba the dominant aggressor in that incident. Amouchal further testified that he had already sold the Boxster and could not, therefore, comply with the requirement in the temporary restraining order to return it to Kutyba, and that he did not know what car Kutyba had driven to the December 7 hearing when he parked on the street near the courthouse. He also stated that he has not contacted or attempted to contact Kutyba since he obtained a restraining order against her. Amouchal did not

address Kutymba's evidence regarding the abuse that occurred prior to May 2017.

At the end of the hearing, the court noted that there was conflicting testimony about events and that the witnesses' credibility weighed "heavily" on its decision. In granting the DVRO, the court stated that it considered not only the evidence of the May 2, 2017 altercation but also Kutymba's evidence of other "incidences . . . [of] domestic abuse," including "stalking, harassment, disturbing the peace, [and] text messages." The court stated that its "primary concern in this respect is in regards to the stalking, the following, the showing up at places, the staying in places the petitioner was for long periods, parking at or near her vehicle at the courthouse." Although the court stated that the basis for the DVRO was "thin," it concluded that the parties "need[ed] to be restrained from each other" "in order to prevent future violence between" them.

The DVRO requires Amouchal not to harass or contact Kutymba and to stay 100 yards away from Kutymba and her home, workplace, and vehicle. It expires three years from the date of the February hearing.

Amouchal timely appealed.

DISCUSSION

A court may grant a restraining order under the Domestic Violence Protection Act (DVPA) if the evidence establishes, "to the satisfaction of the court, reasonable proof of a past act or acts of abuse." (§ 6300.) "Abuse" under the DVPA includes: (1) intentionally or recklessly causing or attempting to cause bodily injury; (2) sexual assault; (3) placing "a person in reasonable apprehension of imminent serious bodily injury to that person or to another"; and (4) engaging "in any behavior

that . . . could be enjoined pursuant to [s]ection 6320.” (§ 6203, subd. (a).) Behavior that may be enjoined pursuant to section 6320 includes “molesting, attacking, striking, stalking, threatening, sexually assaulting, battering . . . harassing, telephoning, . . . contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party.” (§ 6320, subd. (a).) “ ‘[D]isturbing the peace’ ” means “conduct that destroys the mental or emotional calm of the other party.” (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1497.)

The “trial court has broad discretion in determining whether to grant a petition for a restraining order under” the DVPA, and we will reverse a DVRO only for an abuse of such discretion. (*In re Marriage of Fregoso & Hernandez* (2016) 5 Cal.App.5th 698, 702.) In reviewing the court’s express or implied factual findings, we apply the substantial evidence standard. (*Burquet v. Brumbaugh* (2014) 223 Cal.App.4th 1140, 1143.) Under this standard, we accept as true all evidence that is reasonable, credible, and of solid value that supports the trial court’s findings, and resolve evidentiary conflicts and draw all reasonable inferences in favor of the judgment. (*Ibid.*; *Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874.)

Amouchal, as the appellant, has the burden of establishing error and that burden is not lessened by the fact that Kutymba did not file a respondent’s brief. (See *In re Marriage of Fregoso & Hernandez, supra*, 5 Cal.App.5th at p. 702.)

A. *The Sufficiency of the Evidence and the Court's Exercise of Discretion*

Amouchal contends that there is no substantial evidence to support the DVRO and that the court therefore abused its discretion in issuing it. We disagree.

Kutyba supported her request for a DVRO with her written statement describing numerous acts that collectively, if not individually, support the issuance of a DVRO. These included sexual assaulting, slapping, hitting, kicking, and choking Kutyba, and spitting on her. He also threatened to kill Kutyba and her family members. Kutyba affirmed the factual truth of these incidents at the hearing, and Amouchal neither denied nor impeached her evidence of the pre-2017 events. In addition, Kutyba testified that during the May 2, 2017 altercation, Amouchal pushed her to the floor and threw her phone at her. Although Amouchal disputed her account of the incident, the court could have reasonably accepted Kutyba's testimony and rejected Amouchal's testimony. The court also reasonably credited Kutyba's evidence regarding the incident following the meeting at the bail bondsman's office, where Amouchal followed Kutyba to her brother's apartment and parked outside for hours calling and texting threats to Kutyba. Such evidence amply supports the finding of past acts of abuse necessary to uphold the DVRO. (§ 6300.)

Amouchal argues that because he did not contact Kutyba between May 2017 and November 2017 (when Kutyba obtained a TRO against him), the DVRO is unnecessary to serve the statutory purpose of preventing acts of abuse. (See § 6220.) A similar argument was rejected in *Nevarez v. Tonna* (2014) 227 Cal.App.4th 774, 783, which held that, in issuing a DVRO,

“the trial court was not required to find a probability that [the past abuser] would commit future abuse.” (*Ibid.*; see also *Nakamura v. Parker* (2007) 156 Cal.App.4th 327, 334 [court may issue a DVRO “simply on the basis of [a] . . . showing [of] past abuse”].)

Even if a finding of a probability of future abuse is required, the court made that finding when it concluded that the parties needed “to be restrained from each other” “in order to prevent future violence between” them. That finding is supported by the evidence of Amouchal’s threats and the Chatsworth courthouse parking incident. Amouchal, Kutumba stated, made threats to “destroy” and “kill” Kutumba and, in February 2017, vowed to “never leave [her] in peace until his death.” The court was not unreasonable in concluding that, despite the lack of post-May 2017 contact, Amouchal’s threats were credible and that he continued to pose a risk of abuse to Kutumba that warranted the court’s protection.

Regarding the parking incident, Amouchal, at a time when he was prohibited from parking within 100 yards of Kutumba’s vehicle, drove his car from the courthouse parking lot to a spot on the street immediately in front of the Smart Car Kutumba had driven to the hearing. Although Amouchal testified that he did not know what car Kutumba was driving and that he had parked there merely to remove the top of his car and take off his jacket, the court was not unreasonable in rejecting such testimony in light of Kutumba’s testimony that Amouchal was aware that Kutumba no longer possessed the Boxster, Kutumba was staying with her brother, Kutumba’s brother had a red Smart Car, and Amouchal had seen Kutumba arrive at another court hearing in that Smart Car. Moreover, Amouchal offered no explanation

as to why he did not take the top off his car or remove his jacket while he was in the courthouse parking lot. According to Kutyba and E.D., Kutyba was initially confused when she saw Amouchal parked next to the Smart Car, then became “very scared” when, as she approached, Amouchal got out of his car and opened the trunk. At that point, Kutyba returned to the courthouse to seek police protection. The court could reasonably conclude from these facts that Amouchal parked next to the Smart Car to “disturb” Kutyba’s “peace”—an abusive act under the DVPA—and succeeded in doing so. (See § 6203, subd. (a)(4) [abuse includes behavior that may be enjoined under section 6320], § 6320, subd. (a) [court may enjoin acts that disturb the peace of another party].)

Therefore, even if Kutyba was required to prove a credible risk of future abuse or the need to prevent abuse, there is substantial evidence to support the court’s finding of such a need, and thus the court did not abuse its discretion in issuing the DVRO.

B. *Amouchal’s Reliance on Equitable Doctrines*

Amouchal asserts that a variety of equitable doctrines preclude the issuance of the DVRO in this case. We disagree.

First, Amouchal contends that an injunction may not issue to restrain completed acts. Although the proposition is sound (see, e.g., *Scripps Health v. Marin* (1999) 72 Cal.App.4th 324, 332 [“injunctive relief lies only to prevent threatened injury and has no application to wrongs that have been completed”]), the court in this case did not enjoin completed acts, but rather specified conduct—such as harassing Kutyba and coming within 100 yards of her or her car—going forward.

Next, Amouchal argues that the DVRO is barred by the doctrines of laches and unclean hands. It does not appear that he asserted these arguments below and they are, therefore, forfeited on appeal. (See *Owens v. County of Los Angeles* (2013) 220 Cal.App.4th 107, 131.) Moreover, the laches argument is forfeited for the additional reason that it consists entirely of a one-sentence legal proposition—“An injunction cannot be granted when plaintiff has been guilty of laches prior to initiating an action against defendant”—without any discussion of how that proposition applies in this case. (See *Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52.)

The unclean hands argument is based on the theory that Kutumba, having failed to maintain her appeal of Amouchal’s DVRO, sought “to recast herself as the victim in an incident for which she was arrested.” The fact that Kutumba was arrested after the May 2, 2017 incident does not preclude her from obtaining a DVRO on the basis of that incident or other acts of abuse she relied upon. The argument is without merit.

Amouchal further argues that Kutumba is not entitled to injunctive relief because she failed to establish either existing or threatened irreparable injury. For this argument, he points to the absence of contact between the parties for six months in 2017. We addressed a similar point in the preceding part and reject this argument for the same reasons.

C. *The Consequences of the DVRO on Amouchal*

Amouchal asserts that the consequences of the DVRO on him are not de minimus, and suggests that the order is unfair because it makes him appear “to be a domestic violence aggressor” and has “stripped [him] of his right to own and possess a firearm.” He points out, for example, that DVRO

data is entered into the Department of Justice's California Law Enforcement Telecommunications System, or CLETS, which can be accessed by law enforcement agencies (§ 6380, subds. (b) & (e)), and that he may be arrested if a police officer has probable cause to believe the order is violated. (Pen. Code, § 836, subd. (c)(1).)

We do not disagree with Amouchal that there are substantial consequences to being the subject of a DVRO. Nevertheless, the argument is not a claim of error, and we cannot reverse a decision to grant a DVRO on the ground that the subject of the DVRO must deal with its lawful consequences.⁸

⁸ Amouchal contends that the consequences of the DVRO are exacerbated by the fact that his first name is Mohammed and he is of Muslim descent, thus making him subject to profiling “by federal agents working in [Immigration and Customs Enforcement] under President Trump.” Even if this was a cognizable legal argument, it is unsupported by any citations to the record or authority, and, therefore, we do not consider it.

DISPOSITION

The domestic violence restraining order dated February 16, 2018 is affirmed.

Kutyba is entitled to recover her costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur.

JOHNSON, J.

BENDIX, J.